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RECORD OF TRIAL

COVER SHEET

**IN THE
MILITARY COMMISSION
CASE OF**

UNITED STATES

V.

**ALI HAMZA AHMAD
SULAYMAN AL BAHLUL**

ALSO KNOWN AS:

**ALI HAMZA AHMED SULEIMAN AL BAHLUL
ABU ANAS AL MAKKI
ABU ANAS YEMENI
MOHAMMAD ANAS ABDULLAH KHALIDI**

No. 040003

VOLUME ____ OF ____ TOTAL VOLUMES

**1ST VOLUME OF TRANSCRIPT
AUG. 26, 2004 & JAN. 11, 2006 SESSIONS
(REDACTED VERSION)**

United States v. Ali Hamza Sulayman al Bahlul, No. 040003

INDEX OF VOLUMES

A more detailed index for each volume is included at the front of the particular volume concerned. An electronic copy of the redacted version of this record of trial is available at <http://www.defenselink.mil/news/commissions.html>.

The volumes have not been numbered on the covers. The numerical order for the volumes of the record of trial, as listed below, as well as the total number of volumes will change as litigation progresses and additional documents are added.

After trial is completed, the Presiding Officer will authenticate the final session transcript and exhibits, and the Appointing Authority will certify the records as administratively complete. The volumes of the record of trial will receive their final numbering just prior to the Appointing Authority's administrative certification.

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*** Interim volume numbers. Final numbers to be added when trial is completed.**

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UNITED STATES

v.

COMMISSIONS HEARING

ALI HAMZA AHMAD SULAYMAN AL BAHLUL
a/k/a Ali Hamza Ahmed Suleiman al Bahlul
a/k/a Abu Anas al Makki
a/k/a Abu Anas al Yemeni
a/k/a Mohammad Anas Abdullah Khalidi

held at

Guantanamo Bay, Cuba

on

26 August 2004

PERSONS PRESENT:

PRESIDING OFFICER: Colonel Peter E. Brownback III, USA
PROSECUTION COUNSEL: Commander [REDACTED] USN
ASST PROSECUTOR: Lieutenant Colonel [REDACTED] USMC
Captain [REDACTED] USA
DEFENSE COUNSEL: Lieutenant Commander Philip Sundel, USN
ASST DEFENSE COUNSEL: Major Mark Bridges, USA
MEMBERS: Colonel [REDACTED] USMC
Colonel [REDACTED] USMC
Colonel [REDACTED] USAF
Lieutenant Colonel [REDACTED] USAF
ALTERNATE MBR: Lieutenant Colonel [REDACTED] USA
COURT REPORTERS: Sergeant [REDACTED] USMC

The Commission Hearing was called to order at 0931,
26 August 2004.

PO: The military commission is called to order.

P (CDR [REDACTED]): This military commission is convened by Appointing Order number 04-003, dated June 28th 2004; copies of which have been furnished to the members of the commission, counsel, and the accused, and which will be marked as Review Exhibit 1 and attached to the record. There are no corrections noted to the appointing order. The Presidential determination that the accused may be subject to trial by military commission has been marked as Review Exhibit 2 and has been provided to all members.

The charge has been properly approved by the appointing authority and referred to this commission for trial. The prosecution caused a copy of the charge in English and Arabic, the accused's native language, to be served on the accused on August 12, 2004.

The prosecution is ready to proceed in the commission trial of the United States versus Ali Hamza Sulayman al Bahlul.

The accused, commission members, and alternate commission member named in the appointing order and detailed to this commission are present.

All detailed counsel are present.

Gunnery Sergeant [REDACTED] has been detailed reporter for this commission and has previously been sworn.

PO: I'll note that she's gotten a promotion that she isn't aware of.

P (CDR [REDACTED]): Yes, sir. Sergeant [REDACTED]

Security personnel have been detailed for this commission and have been previously sworn.

The interpreters have been detailed for this commission and have also been previously sworn. The full names of the interpreters who are providing interpretation for today's hearing are contained in Review Exhibit 3, a copy of which has been previously provided to the

defense and the reporters for inclusion in the record.

The bailiff has also previously been sworn.

PO: Previously marked, shown to counsel, and signed is RE 4, a protective order concerning the identity of the interpreters. Either side object to that order?

P (CDR [REDACTED]) No, sir.

DC (LCDR Sundel): No, sir.

PO: I have been designated as the presiding officer of this commission by the appointing authority, and I have been previously sworn. All other members of the commission and the alternate member will now be sworn.

All persons in the courtroom, please rise.

The members were sworn.

PO: The commission is assembled.

I would ask before we continue all people who are going to speak to remember that we have to speak so the interpreters, the translators can translate.

Before continuing with preliminary matters, it is necessary for me to inquire into the accused's need for an interpreter.

Mr. al Bahlul, do you understand and speak English?

ACC: I prefer to have an interpreter.

PO: Would you repeat the translation, please?

ACC: I prefer to have an interpreter present.

PO: What language do you speak?

ACC: Arabic language.

PO: As I said earlier, translators have been appointed to this case. Do you understand the translation that is being made?

ACC: Clear.

PO: Commander [REDACTED] please state the detailing and qualifications of the prosecution.

P (CDR [REDACTED]) Sir, all members of the prosecution have been detailed to this military commission by the chief prosecutor. All members of the prosecution are qualified under Military Commission Order Number 1, Paragraph 4(b), and we have previously been sworn. No member of the prosecution has acted in any manner which might tend to disqualify us in this proceeding. The detailing document has been marked as Review Exhibit 5 and previously provided to the court reporter.

PO: Commander Sundel, have either you or Major Bridges -- well, have you and Major Bridges been properly detailed to this case?

DC (LCDR Sundel): We have, sir.

PO: Has either of you acted in any manner inconsistent with your duties?

DC (LCDR Sundel): Not that I'm aware of.

PO: I'll take that for a no.

Mr. al Bahlul, pursuant to Military Commission Order Number 1, you are now at this moment, represented by your detailed counsel, Commander Sundel and Major Bridges. They are provided to you at no expense. You may also request a different military lawyer to represent you. If the person you ask for is reasonably available, he or she would be appointed to represent you. If that happens, your detailed counsel, Commander Sundel and Major Bridges, would normally be excused; however, you could request that they remain on the case.

In addition, you may request to be represented by a civilian lawyer. A civilian lawyer would represent you at no expense to the government. Such a lawyer must be a United States citizen and certified to practice law in the United States. She or he must be eligible for a secret clearance and agree in writing to comply with the rules of the commissions. If you had a civilian lawyer, the detailed counsel, Commander Sundel and Major Bridges would remain on the case. Do you understand what I just said?

ACC: Clear.

PO: Do you have any questions about your rights to be being represented before this commission?

ACC: Am I allowed to represent myself?

PO: I'm referring to Military Commission Order Number 1, Paragraph 4(c), sub (4). It states, the accused must be represented at all relevant times by detailed defense counsel. So the answer is, no, you're not allowed to represent yourself.

ACC: Excuse me. If I can ask the judge --

PO: Please speak up.

ACC: -- if I can to know the reason that disqualifies me from representing myself. I would like to know why, and if not --

PO: Okay. Are you asking to represent yourself before this commission?

ACC: Yes, I would like to represent myself.

PO: Sir, could you please try speaking -- or move the mic closer to yourself.

ACC: Yes, I would like to represent myself. [Interpreter: Is that better?]

PO: Let's talk about that. I want to go over several matters with you so that you understand what such a request means. Let me talk about your detailed counsel.

To be detailed counsel, they have to be qualified attorneys; that means that they have to be admitted to practice before the highest court of a state, and be commissioned as a judge advocate in one of the military services of the United States.

Commander Sundel, you're obviously Navy. What state?

DC (LCDR Sundel): I am barred in Maryland, sir.

PO: Major Bridges you're Army. What state?

ADC (Maj Bridges): Kentucky, sir.

PO: Okay. So Commander Sundel is admitted to practice in Maryland, and he's been certified by the Judge Advocate General of the Navy as a judge advocate. Major Bridges is admitted in Kentucky, and he's been certified by the Judge Advocate General of the Army.

Okay. Second, before they got here, they were nominated; they were chosen by the Navy and the Army as representatives of those services to serve as defense counsel. And then they were selected as defense counsel by Colonel Gunn who is the Chief Defense Counsel of the commissions. He's an Air Force officer. They have to have a security clearance, and they both do have security clearances; correct?

DC (LCDR Sundel): Yes, sir.

ADC (Maj Bridges): Yes, sir.

PO: So they can see all the information for that tribunal or commission. In addition to graduating from college and law school, they've each received extensive training in military law which is, at times, a confusing subset of law. From the time they became judge advocates, they've learned not only military legal principles and terminology, but they've learned military terminology about troops and airplanes and ships and things like that. And they've become familiar with the general military practice and how things are handled in the Departments of the Navy, Army, and the Department of Defense.

And -- I resist making a comment about Kentucky -- they are both fluent in English, which is a necessity here.

Perhaps even more importantly, they are not on trial here, which means that they are not personally involved, which means that they can remain objective in situations when a person about whom things are being said might become emotional or heated. Do you understand what I've said so far?

ACC: Yes, I understood.

PO: Now, like I said before, Commander Sundel and Major Bridges are both judge advocates. They have both been

detailed to represent you since the 3rd of February of 2004. During this period, while I'm not aware of their exact activities since they don't reveal things to me, I feel certain that they have been studying the law which is applicable to these proceedings, preparing various matters to present to the commission and to other authorities, and determining how best to represent you in front of the commission.

Given their background and training, they have the skill and knowledge to force the commission to apply the rules and the law on your behalf; and if they feel that the commission has not done so, they have instant access to computers to make and file motions. They can make objections. They can argue by analogy to federal, military, and international law; and they have research resources, both computer and personal, which will help them insure that your rights are represented or protected in these proceedings. Do you understand what I just said now?

ACC: Yes, I understand. I have a question based on what you said. Are you done?

PO: Not yet.

ACC: When you're done.

PO: No, I'm sorry. Yes, you may ask your question now.

ACC: I have some idea about practicing law in Yemen. [To interpreter]

PO: Excuse me. Could you please lean forward and speak just a little louder.

ACC: I have some idea about practicing law in Yemen.

DC (LCDR Sundel): Excuse me, sir. I'm not sure that was exactly what Mr. al Bahlul said. My understanding is he said that he knows some people who practice law.

INT: I do apologize, sir. Correction, I have --

ACC: Nobody represents me until this point. I wish nobody would interrupt you while I'm talking. I have some people that do practice or are familiar with law in the country of Yemen from different areas.

If the American law, as far as I know, would allow me to be represented by a Yemeni attorney through American system, is it possible that I can be granted this, a Yemeni attorney. And as far as I know, if I'm right, that I cannot be represented by anybody other than an American. Is it possible that the Yemeni attorney, through the American attorney, can be involved in my case?

PO: So we are talking correctly, so I can make sure I understood what you requested, referring again to MCO Number 1, Paragraph 4(c)(3), it states, in talking about civilian counsel -- which just means anyone who's not wearing a uniform -- that the attorney, the civilian must be a United States citizen. And you understood that you -- it appeared to me that you understand that.

Now, is what you are telling me that you want to have a Yemeni attorney provided at no expense to the government, meaning the United States Government, present to assist your detailed counsel, Commander Sundel and Major Bridges for this proceeding? I don't know, that's why I'm asking.

ACC: Yes.

DC (LCDR Sundel): Sir, if I just may?

PO: Yeah, you may.

DC (LCDR Sundel): I think perhaps what we may want to do is to clarify if his first preference is to represent himself; if that is not allowable, his second preference is to be represented exclusively by a Yemeni attorney; and if that is not allowable, his last preference is to be represented by military counsel, with a Yemeni attorney assistant.

PO: Thank you for your assistance, I mean it.

You heard Commander Sundel, so now I'm going to ask you. I explained to you generally your rights to counsel. Detailed counsel, a requested military counsel, a civilian counsel, U.S. citizen, those are your rights to counsel. As you're sitting there, please just tell me, right now, what do you want? Do you want a second talk to someone? Honest, I mean -- do you want to take a --

ACC: I have mentioned previously, and you answered it. I asked if I can represent myself, you said no. But what I meant -- I do not want an attorney representing me. I'll attend the sessions if it's mandatory to attend; I'll be here. If I do have that choice attending the sessions, I'd rather not be here. This is an order.

PO: What was the last word, sir?

ACC: If I do not have -- if it's have to attend the hearing, then I'd rather not attend.

PO: I do not recall directing or stating that you are not allowed to represent yourself. What I said and I read was the provision of the military commission order. I am trying, honestly, to find out your desires and to find out something more about you and those desires. I have not ignored what you said, but I want to find out some more before I say anything in that regard; okay?

ACC: Good.

PO: Commander [REDACTED] did I say, on the record -- if I did -- did I say he couldn't represent himself, or did I read from the -- I'm not trying to trick anyone. I don't remember saying he could not represent himself.

P (CDR [REDACTED]) One moment, sir. Sir, I believe that when you read the instruction, that's the reasonable interpretation of the instruction.

PO: Order, but that's fine.

P (CDR [REDACTED]) The order that you read.

PO: Okay. I get to interpret my words, he gets to translate them.

Before I say anything on that subject, Mr. al Bahlul, I'd like to know something more about you. And if you wish, you can take a moment and talk with anyone and you can tell me whether or not you want to answer these questions.

How old are you?

ACC: You can ask me anything. I don't need to go back to anybody.

PO: How old are you?

ACC: Thirty-six years.

PO: How many years of formal education do you have?

ACC: Sixteen years.

PO: Have you spent much time in the American culture other than your time here at Guantanamo?

ACC: This is personal, to me?

PO: Yes, personally.

ACC: Are you interested or is it important to you that I answer this question?

PO: I'm asking the question because the proceedings that you're in front of are derived from our culture, and different cultures have different ways of handling things. And I guess what I'm asking is this: Is your knowledge of our culture sufficient to make things that would appear strange if you had no knowledge, not appear so strange? That's all I'm asking.

ACC: I have large amount of knowledge.

PO: Okay. Talking about language, we are using a translator now, but there are things that are said, no matter how good the translator might be, that lose something in translation. And therefore, I ask: Is your fluency level in English such that you can understand most of what's said without translation?

ACC: Not a large scale.

PO: Have you had any formal training in the law? And here I'm not talking just about the American legal system, but any legal training.

ACC: I've read legal matters and books.

PO: Other than the legal motions that you've seen, have you ever studied international law or the law of war? It's not something that most people may much attention to.

ACC: Yes, I did. I've read.

PO: You have been given a copy of the charges against you at this proceeding -- and before you answer this question, please take time to consider my use of the word "understand". When I say "understand", what I mean is, do you comprehend, as they are written, what they are charging? Having put that caveat -- having put that explainers in, do you understand the charges against you?

ACC: Very good.

PO: Do you realize that because -- well, that in accordance with the President's military order and Military Commission Order Number 1, there may be evidence against you which you would not be allowed to see because of its protected nature?

ACC: Do you have another question? The protected information, this is something that is intentional. The people that started this were the British, relating to Muslims. I don't think it's fair that the evidence would not be presented and the accused cannot defend himself without seeing such evidence for himself, or even through an attorney.

PO: You have made in your response, what you just said, a challenge to the structure, the way the commission is set up. And the commission will take a motion -- piece of paper on this.

That wasn't my question. My question was: Whether you believe it's fair or not fair, do you understand right now that you will not be able to see certain evidence because it is either classified or protected. Right now, you can't see it. Do you understand that?

ACC: For the protected evidence, let's put it aside. It's all well known in all those -- the civilian or the local, the decision is the evidence, especially if that decision is under no pressure, and based on the person without any -- without being placed under any pressure, and based on personal decision or preference.

I know that the presiding officer is not interested that I decide that I am from al Qaida or not. Let the proceedings take its course regarding if I am guilty or not.

One point that I would like the judge to understand and the members or the panel, and the people -- the people that are the jurors, or the people that were sworn in, and the prosecutor, and the defense team that until this point does not represent me, and the visitors and detainees, and if it's being, you know, viewed via media channels, people that are watching as well, people of the entire globe should know, I testify that the American government is under no pressure. Nobody has put the United States Government under pressure. I am from al Qaida, and the relationship between me and September 11th --

PO: Members -- thank you. Please stop for a second.

Members, you all understand that I am questioning Mr. al Bahlul in order to determine his representation. You all understand that; right? You all understand that Mr. al Bahlul has not been placed under oath?

Apparently so.

You further understand that none of this is evidence in any way. Do you all understand that?

Apparently so.

I apologize for interrupting you.

P (CDR [REDACTED]) Sir, before we go on, we'd note our objection to that statement and ask for a recess.

PO: What do you wish to discuss in the recess?

P (CDR [REDACTED]) I think our objection is noted. We don't think that's an accurate statement of commission law.

PO: Thank you. You may provide a brief on that matter.

P (CDR [REDACTED]) Yes, sir.

PO: Go on.

ACC: I know that this is like an arraignment, and the questions are limited legally, and there is other sessions that will take place. And it's normal from the presiding officer and the others sitting here take their time to see that probably they might render an improper

judgment; so that we don't really go into, you know, side things, you know, over here.

In short, I would like to represent myself, and I'm telling this to the presiding officer, or the judge. For the questions that the judge have asked, for the things that you need to know about me relating to being familiar with the law and the new laws. Specifically, there was new laws that were drafted in the United States specifically after the September 11th incident. I would like to file a motion to represent myself and defend myself at the same time.

I can write or everybody in this room can be a witness in the next sessions. Nobody should be worried relating to me causing problems, or being loud, or basically saying things that might be inflammatory. I can give you my word, you know, my verbal promise, that basically I would not, you know, go against that, what I'm saying today.

From your questions, you know, you wanted to know my level of law-wise, you know, legal terms, legal terms relating to the local. I know all the Islamic laws and according to your questions, basically wants to verify my ability. And if the American system would not allow me to defend myself, then I'll be forced to attend and I'll be a listener. Only.

PO: While I'm thinking, let me make a note that's an aside. I have motioned at counsel and Mr. al Bahlul and myself with what I prefer to think of as a slow-down motion solely because we all talk too fast for the translators sometimes.

You stated that up until this time, while Commander Sundel and Major Bridges were detailed as your counsel, they were not representing you.

ACC: They don't represent me.

PO: There's a term in the law called amicus curiae. What it means is a friend of the court. Would you permit Commander Sundel and Major Bridges to file, or to give to the commission on your behalf a motion requesting that you be allowed to represent yourself, which is what you've told me you want to do? Because until someone tells the commission that this order does not apply, the

commission is not able to let you represent yourself. And I further tell you that, based on my experience, the best way to get an answer to your question would be to have a motion filed.

Will you permit them to file a motion on your behalf, not stating that they are representing you?

ACC: If I represent that motion through me, through the legal term, that means I did have them represent me.

PO: No, I have just said that they would file a motion as an amicus, meaning just as a friend of the commission.

ACC: Friends of the commission?

PO: As a --

ACC: As a mediator between the two of us?

PO: I would imagine that sitting there, Commander Sundel and Major Bridges have the desire to get you what you want, if they can. No one on this commission is going to write a brief -- a brief is just the law that's attached to a motion -- which puts forth your side. By allowing them to file an amicus brief, you have said and I've heard, we've all heard, it's on the record that they're not representing you. And you -- by allowing them to file an amicus brief, you're not changing that. You're just getting the benefit -- how long in the service, Major Bridges? JAG Corps?

ADC (Maj Bridges): Twelve-and-a-half years, sir.

DC (LCDR Sundel): About 14 years, sir.

PO: -- of 26-and-a-half years of legal training who are trying to get you what you want on this one issue.

ACC: I would only stick to the verbal offer.

PO: Well, you get your recess, Commander [REDACTED] Court's in recess.

The Commission Hearing recessed at 1028, 26 August 2004.

The Commission Hearing reconvened at 1110, 26 August 2004.

PO: The commission will come to order. Let the record reflect that all parties present when the commissions recessed are once again present.

In looking at my notes, I note that I failed to mention on the record the defense counsel detailing letter which is already what, Commander [REDACTED]

P (CDR [REDACTED]) Six, sir.

PO: Thank you. Mr. al Bahlul, in the course of our discussions, I believe I determined what it is you want. I'm going to ask you again so that I can make sure that I know. The first thing you want, your desires are that you be permitted to represent yourself before this commission; is that correct?

ACC: Yes.

PO: If that is not permitted, your second choice is to be represented by a Yemeni attorney; is that correct?

ACC: As far as the Yemeni attorney is concerned, if I get the guarantees that he'll not be harmed neither by the Yemeni, nor by the American authority because of the sensitivity of the matter, and the sensitivity of the matter as far as the al Qaida case and the United States of America, if I get guarantees from the Yemeni government and the Americans that they will not be harmed, as far as the sensitivity of the matters, then I can appoint if law permits me to do so.

PO: I'll rephrase my understanding. If you are not allowed to represent yourself, you wish to have a Yemeni lawyer represent you subject to the guarantees you just stated; is that correct?

ACC: This is okay because I don't want anybody to be harmed because of me.

PO: What you have posed, as I believe I stated before, are structural challenges to the commission proceedings. The commission, as it sits here, does not have the authority to make those structural changes.

However, the commission will cause -- will make a transcript of everything that's been said and forward it to the people who can make or authorize structural

changes. You have told me that you do not wish Commander Sundel and Major Bridges to do anything on your behalf.

ACC: Yes, either them or anybody else.

PO: Commander Sundel, speaking for yourself and Major Bridges, recognizing that Mr. al Bahlul says that you do not represent him, I hereby direct you to provide, for forwarding to the appointing authority, a motion. And this motion will address two structural changes and your support -- your legal support -- a motion. The structural changes will be concerning the right of an accused to represent himself, and the right of an accused to get a foreign attorney to represent him.

Y'all have been on the case for a long time. By the -- I'm sorry, I also did not say, you will not in this motion state that you are representing the views or desires of Mr. al Bahlul. Any question about that?

DC (LCDR Sundel): No, sir.

PO: Don't sit down yet. When can you have a well-reasoned and well-researched brief on those matters prepared to send forward?

DC (LCDR Sundel): I think we could have that ready a week from tomorrow, sir. That would be the 3rd of September, sir.

PO: Okay. Provide it to prosecution; prosecution, you provide your response to Commander Sundel and Major Bridges in their capacity as detailed counsel who are not representing Mr. al Bahlul by the 17th of September.

You provide, Commander Sundel, by the 30th of September your final reply and all the matters therewith to the appointing authority, Mr. Altenburg.

I will provide both counsel -- I will provide the prosecution and Commander Sundel and Major Bridges no later than Saturday, a transcript of these proceedings so that you both -- so that the prosecution and the detailed defense counsel may see what Mr. al Bahlul stated verbally on the record. This transcript will be authenticated in due course.

All authenticated means, Mr. al Bahlul, is that I will

review it and sign it and say that's what happened and I will forward it and a certified interlocutory question to Mr. Altenburg for his action. And all that should arrive for him to start work on by the 30th of September.

Commander [REDACTED] is there anything else that I can do at this time, in your opinion, to frame the issue or to get this matter resolved?

P (CDR [REDACTED]) No, sir. We believe what you laid out is the approved course of action.

PO: Mr. al Bahlul, you've heard what I've said. The appointing authority will be the one to start the decision making on this process. If you wish to submit any matters to Mr. Altenburg other than what you've stated on the record here today, those matters will have to be forwarded so as to reach him by the 30th of September.

ACC: And it is about what?

PO: About the whole thing we've been talking. Earlier, you stated that you did not want to put anything in writing; you wanted it to be all words. I have told you --

ACC: A verbal request. Like he said earlier, verbal request.

PO: What you stated verbally, has been taken down by Sergeant [REDACTED] and it will become written. I am telling you, though, that if you change your mind -- I'm not telling you to change your mind -- I'm saying if you change your mind and you want to submit anything to Mr. Altenburg those matters have got to reach him by the 30th of September.

Anything else, Commander [REDACTED]

P (CDR [REDACTED]) No, sir.

PO: Members?

I am not going to set a date for the next hearing in this case. Once Mr. Altenburg or others in the chain make a decision, I'll do something then; okay?

All rise. Court's in recess.

The Commissions Hearing recessed at 1125, 26 August 2004.

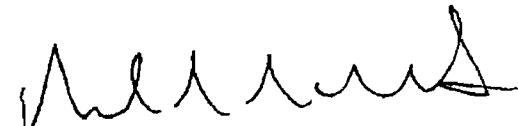
AUTHENTICATION OF COMMISSIONS PROCEEDINGS

in the case of

United States v. ALI HAMZA AHMAD SULAYMAN AL BAMLUL

a/k/a Ali Hamza Ahmed Suleiman al Bahlul
a/k/a Abu Anas al Makki
a/k/a Abu Anas al Yemeni
a/k/a Mohammad Anas Abdullah Khalidi

This is to certify that Pages 1 through 18 are an accurate
and verbatim transcript of the foregoing proceedings.



Peter E. Brownback III
Colonel, U.S. Army
Presiding Officer

27 AUGUST 2004
Date

UNITED STATES

v.

ALI HAMZA AHMAD SULAYMAN AL BAHLUL
a/k/a Ali Hamza Ahmed Suleiman al Bahlul)
a/k/a Abu Anas al Makki
a/k/a Abu Anas al Yemeni
a/k/a Mohammad Anas Abdullah Khalidi

COMMISSION HEARING

held at

Guantanamo Bay, Cuba

on

11 January 2006

PERSONS PRESENT:

PRESIDING OFFICER: Colonel Peter E. Brownback III, USA

PROSECUTION COUNSEL: Lieutenant Colonel [REDACTED] USAFR

ASST PROSECUTOR: Lieutenant Commander [REDACTED] USN

Major [REDACTED] USA

DEFENSE COUNSEL: Major Thomas A. Fleener, USAR

COURT REPORTERS: Master Gunnery Sergeant [REDACTED] USMC

1 The commission hearing was called to order at 1007, 11
2 January 2006.

3
4 PO: This Military Commission is called to order.

5
6 TC (Maj [REDACTED]: This Military Commission is convened by
7 Appointing Order Number 04-0003, dated 28 June 2004 as
8 amended by Appointing Order Number 05-003, dated 4
9 November 2005; copies of which have been furnished to the
10 Presiding Officer, counsel, and the accused, and which
11 have been marked as Review Exhibits 105 and 107
12 respectively and will be attached to the record.

13
14 The Presidential determination that the accused may be
15 subject to trial by Military Commission has been marked as
16 Review Exhibit Number 104 and has been previously provided
17 to the defense.

18
19 The charges have been properly approved by the Appointing
20 Authority and referred to this Commission for trial.

1 The prosecution caused a copy of the charges in English
2 and Arabic, the accused's native language to be served on
3 the accused on 12 August 2004.
4

5 The prosecution is ready to proceed in the Commission
6 Trial of the United States versus Ali Hamza Ahmad Sulayman
7 Al Bahlul.
8

9 The accused, the Presiding Officer, and all detailed
10 counsel are present with the exception of Lieutenant
11 [REDACTED], who was excused from this session by the
12 detailing authority.
13

14 A court reporter has been detailed reporter for the
15 Commission and has been previously sworn. Security
16 personnel have been detailed to this Commission and have
17 been previously sworn. The Commission translators have
18 been detailed for this Commission and have been previously
19 sworn. Their curriculum vitae are in Review Exhibits 131
20 and 132, which have been attached to the record.
21

1 PO: I've been designated as the Presiding Officer of this
2 Military Commission by the Appointing Authority. I've
3 been previously sworn.
4
5 Okay, before proceeding I've got to inquire into the
6 accused's need for an interpreter.
7
8 Mr. Al Bahlul, are you able to understand English?
9
10 ACC: I need interpreter.
11
12 PO: Okay. Looking back in the row, I see that the defense
13 counsel is not at the defense table. I see a person in a
14 blue shirt. Who are you, sir?
15
16 INT: I'm the interpreter, sir.
17
18 PO: Come forward.
19
20 The interpreter did as directed.
21

1 PO: What's your name?
2
3 INT: [REDACTED]
4
5 PO: Okay. Mr. Al Bahlul, do you understand the language that
6 your interpreter speaks?
7
8 ACC: Yes.
9
10 INT: Yes, he does.
11
12 PO: Okay. Have you been sworn, sir?
13
14 INT: Yes, I have.
15
16 PO: Sir, have you been sworn to perform your duties
17 faithfully?
18
19 INT: Yes, I have.
20
21 PO: Okay. Thank you.

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Mr. Prosecutor, please state by whom you've been detailed and your qualifications.

TC (Maj [REDACTED]: Yes, sir. All members of the prosecution have been detailed to this Military Commission by the Chief Prosecutor, Colonel Davis. All members of the prosecution are qualified under Military Commission Order Number 1, Paragraph 4 (Bravo) and have been previously sworn. No member of the prosecution has acted in any manner which might tend to disqualify us in this proceeding.

The detailing document is now being marked as next review exhibit in order. I believe Number 134.

The prosecution also has sitting at the prosecution table an assistant who will assist the prosecution but will not be representing the government.

1 PO: Okay I notice, Mr. al Bahlul that you -- do you have a
2 headset on that I just can't see?
3
4 INT: No he doesn't, sir.
5
6 PO: How are you receiving the translation of what I say?
7
8 INT: Do you mean the level of the sound -- the sound level?
9
10 PO: No what I mean is I am speaking in English. I thought
11 the translators were translating into a microphone onto --
12 in a headset that you would have on. That's what -- for
13 those who are not familiar, Mr. al Bahlul and I are the
14 only people left in this courtroom who saw each other in
15 August of 2004. At that time you had a headset on. You
16 don't have one on today so, my question is, how does he
17 know what I am saying?
18
19 INT: He hears you and he understands you perfectly. He hears
20 you and he takes -- and because I translate, you know, for

1 him, he understands from me basically. He does not speak
2 English very well.

3
4 PO: Okay. Mr. al Bahlul, if I or someone else says something
5 and the ability of your translator to tell you what they
6 say when you don't understand what I say gets too much,
7 please tell me and I will get the headset mechanism back
8 so that the people in the booth over there can translate
9 for you.

10
11 The people in the booth are about to tell me something.

12
13 The accused consults with his interpreter.

14
15 PO: Mr. Prosecutor, do you have any idea what the translation
16 set-up is?

17
18 TC: My understanding of the translation set-up was that a set
19 of headphones would be available for Mr. al Bahlul, Your
20 Honor. I'm not sure why we don't have them. I would like

1 to take a short recess in place so we can determine where
2 these are.

3
4 PO: Yeah, that would be a good idea. Court's in recess.

5
6 The commission hearing recessed at 1013, 11 January 2006.

7
8 The commission hearing was called to order at 1016, 11
9 January 2006.

10
11 PO: The Commission will come to order. Let the record reflect
12 that all parties present when the Commission recessed are
13 once again present.

14
15 The Commission is delighted to note that you now have a
16 headset on, Mr. al Bahlul.

17
18 Mr. al Bahlul, you have a microphone in front of you.
19 This [indicating] one, if you will speak into it when you
20 are speaking, that way what you say can be translated.

1 I am surprised Mr. Translator that I am having to provide
2 this briefing, but I don't know why this wasn't done by
3 someone else. Your job is to assist Mr. al Bahlul talking
4 to others, not repeating his words to me.

5

6 INT: Yes, sir.

7

8 PO: If, of course, there is some matter that, for reasons that
9 I don't know, the translator and Mr. al Bahlul doesn't
10 understand what is said, feel free to -- you know, you are
11 there to help him, okay?

12

13 INT: Yes, sir.

14

15 PO: Okay. Mr. al Bahlul, we started about ten minutes ago and
16 we went over some things. Was your comprehension of that
17 good enough to understand what we went over or do you want
18 me to start all over again?

19

20 ACC: I hear the translation very clearly -- I don't hear the
21 translation very clearly.

1

2 PO: Okay. The translators are going to have to speak up or
3 increase the sound because the Presiding Officer can't
4 hear what you are saying.

5

6 Say it again, translators.

7

8 ACC: I don't hear the translation very clearly.

9

10 PO: Fine. We'll start all over again.

11

12 This Military Commission is called to order again. Start
13 over prosecutor.

14

15 TC: Yes, sir.

16

17 This Military Commission is convened by Appointing Order
18 Number 04-0003 dated, 28 June 2004 as amended by
19 Appointing Order Number 05-003, dated 4 November 2005;
20 copies of which have been furnished to the Presiding
21 Officer, counsel, and the accused and which have been

1 marked as Review Exhibits 105 and 107 respectively and
2 will be attached to the record.

3
4 The Presidential determination that the accused may be
5 subject to trial by Military Commission has been marked as
6 Review Exhibit 104 and has been previously provided to the
7 defense.

8
9 The charges have been properly approved by the Appointing
10 Authority and referred to the Commission for trial. The
11 prosecution caused a copy of the charges in English and
12 Arabic, the accused's native language, to be served on the
13 accused on 12 August 2004.

14
15 The prosecution is ready to proceed in the Commission
16 Trial of the United States v. Ali Hamza Ahmad Sulayman al
17 Bahlul.

18
19 The accused, the Presiding Officer, and all detailed
20 counsel are present with the exception of Lieutenant

1 [REDACTED] who has been excused for this session by the
2 detailing authority.
3

4 A court reporter has been detailed reporter for this
5 Commission and has been previously sworn. Security
6 personnel have been detailed for this Commission and have
7 been previously sworn. Commission translators have been
8 detailed for this Commission and have been previously
9 sworn. Their curriculum vitae are in Review Exhibits 131
10 and 132, which will be attached to the record.
11

12 PO: I've been designated as the Presiding Officer of this
13 Military Commission by the Appointing Authority and I've
14 been previously sworn.
15

16 Okay before we continue on, we'll get back to the
17 translator matters. Mr. al Bahlul, you understand and
18 speak some English, but you are not fluent in that
19 language; is that correct?
20

1 ACC: I do not hear anything of what the prosecutor said
2 because of the low quality of the voice. The level of the
3 voice is very low.
4
5 PO: Okay. We will start that over again. Translators, the
6 prosecutor will start--if you can jack up the gain to the
7 accused's headphones.
8
9 Now, Mr. al Bahlul after the first sentence that the
10 translator says on the prosecutor, I will ask you if you
11 are hearing correctly. If at anytime you can't hear
12 correctly, please let me know.
13
14 ACC: I do not hear. I do not hear the voice of a translator.
15
16 PO: They aren't saying anything right now. We'll start
17 again. Prosecutor, start again.
18
19 TC: Yes, sir.
20

1 This Military Commission is convened by Appointing Order
2 Number 04-003, dated 28 June 2004 as amended by Appointing
3 Order Number 05-003, dated 4 November 2005; copies of
4 which have been furnished to the Presiding Officer,
5 counsel, and the accused, which have been marked as Review
6 Exhibits 105 and 107 respectively and which will be
7 attached to the record.

8
9 PO: Did you hear that, Mr. al Bahlul?

10
11 ACC: I did not hear.

12
13 PO: Okay. Mr. Prosecutor.

14
15 TC: Yes, sir?

16
17 PO: We'll have a recess. You will be in place, I won't, and
18 you all will fix this problem.

19
20 Court's in recess.

1 The commission hearing recessed at 1022, 11 January 2006.

2
3 The commission hearing was called to order at 1032, 11
4 January 2006.

5
6 PO: This Commission is called to order. Read it again, Sam.

7
8 TC: Yes, sir. All parties present when the Commission
9 adjourned are again present.

10
11 PO: Start from the top.

12
13 TC: This Military Commission is convened by Appointing Order
14 Number 04-0003, dated 28 June 2004 as amended by
15 Appointing Order Number 05-003, dated 4 November 2005;
16 copies of which have been furnished to the Presiding
17 Officer, counsel, and the accused; and which have been
18 marked as Review Exhibits 105 and 107 respectively and
19 which will be attached to the record.

20
21 PO: Can you hear that, Mr. al Bahlul?

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TC: Yes.

PO: Continue.

TC: The Presidential determination that the accused may be subject to trial by Military Commission has been marked as Review Exhibit 104 and has been previously provided to the defense.

The charges have been properly approved by the Appointing Authority and referred to this Commission for trial. The prosecution caused a copy of the charges in English and in Arabic, the accused's native language to be served on the accused on 12 August 2004.

The prosecution is ready to proceed in the Commission Trial of the United States versus Ali Hamza Ahmad Sulayman al Bahlul.

1 The accused, the Presiding Officer, and all detailed
2 counsel are present with the exception of Lieutenant
3 [REDACTED], who has been excused for this session by the
4 detailing authority.

5
6 A court reporter has been detailed reporter for this
7 Commission and has been previously sworn. Security
8 personnel have been detailed for this Commission and have
9 been previously sworn. Commission translators have been
10 detailed for this Commission and have been previously
11 sworn. Their curriculum vitae are in Review Exhibits 131
12 and 132 which will be attached to the record.

13
14 PO: I've been designated as the Presiding Officer of this
15 Military Commission by the Appointing Authority. I've
16 been previously sworn.

17
18 Before continuing on, let's talk about your need, Mr. al
19 Bahlul for an interpreter.

1 Are you able to understand and speak English, Mr. al
2 Bahlul?
3
4 ACC: Can you tell I have some things that I need to say before
5 I answer this question?
6
7 PO: Mr. al Bahlul, before I go into anything else, I need to
8 know if you need an interpreter.
9
10 ACC: Yes, I need an interpreter.
11
12 PO: I note that there is a person seated at the table next to
13 you.
14
15 Would you please tell me, sir, your name?
16
17 INT: [REDACTED].
18
19 PO: Are you able, Mr. al Bahlul to understand the -- your
20 interpreter's translation of English to Arabic?
21

1 ACC: Could you repeat the question?

2

3 PO: You have an interpreter sitting next to you. When he
4 speaks to you in Arabic, do you understand what he says?

5

6 ACC: Yes, I do.

7

8 PO: Okay.

9

10 Sir, have you been previously sworn?

11

12 INT: Yes, I have.

13

14 PO: Thank you.

15

16 Prosecutor, please go through detailing and qualifications.

17

18 TC: Yes, sir.

19

20 All members of the prosecution have been detailed to this
21 Military Commission by the Chief Prosecutor. All members

1 of the prosecution are qualified under Military Commission
2 Order Number 1, Paragraph 4(b) and have been previously
3 sworn.

4
5 No member of the prosecution has acted in any manner which
6 might tend to disqualify us in this proceeding. The
7 detailing document has been marked as Review Exhibit 134.
8 The prosecution also has seated at the prosecution table
9 an assistant who will assist the prosecution, but will not
10 represent the government.

11
12 PO: Mr. al Bahlul, in just a second you will be able to tell
13 me what it was you wanted to tell me, but please wait
14 until I tell you, you can tell me.

15
16 Pursuant to Military Commission number -- Order Number 1,
17 you are represented by your detailed defense counsel. He
18 is provided to you at no expense to you. I note that
19 Major Fleener is in the courtroom. I further note that he
20 is not seated at the defense table, however he is before
21 the bar. I note that he did not make a request of the

1 Commission to change the normal seating. However, we will
2 go into that at a later time.

3
4 Major Fleener, back there [indicating], detailed defense
5 counsel.

6
7 Okay, you understand that?

8
9 ACC: I understood. However, I do not need to be represented.

10
11 PO: Okay. Mr. al Bahlul, please just listen to the specific
12 question I ask. If we can go through this, then we can
13 get to where you get to say what you want, but I am
14 required to tell you certain things and then you get to
15 say what you want.

16
17 Do you understand that?

18
19 ACC: I only answer to your question and I answer to your
20 question precisely.

1 PO: Okay, then I will ask again. At this moment Major
2 Fleener, the officer seated to your right rear with the
3 Army green uniform on, is your detailed defense counsel
4 and he is representing you.

5
6 Do you understand that, at this moment?

7
8 ACC: I understand that he has been forced on me.

9
10 PO: However you want to characterize it, Mr. al Bahlul. He is
11 your detailed defense counsel. If the translators could
12 turn up the volume in the courtroom so that I could hear
13 what is coming out in English, I would appreciate it.

14
15 Mr. al Bahlul, you may request a different military
16 counsel to represent you. If the person you request is
17 reasonably available, she or he would be appointed to
18 represent you free of charge. If you request a different
19 military counsel and that lawyer is detailed, your current
20 detailed counsel, Major Fleener, would normally be
21 excused. However, he could remain on the request at the

1 discretion of the Chief Defense Counsel if you ask for him
2 to remain on the case.

3
4 Do you understand that?

5
6 ACC: Yes, I understand that.

7
8 PO: Thank you. In addition, you may be represented by a
9 qualified civilian lawyer. A civilian lawyer would
10 represent you at no expense to the United States
11 government. That lawyer must be a United States citizen,
12 admitted to practice in a state, district, territory or
13 possession of the United States. They must not have been
14 sanctioned or disciplined for any misconduct. They must
15 be eligible for a security clearance in the grade of
16 secret, and they must agree in writing to comply with the
17 orders, rules, and regulations of Military Commissions.

18
19 Do you understand that?

20
21 ACC: Yes.

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PO: Thank you for turning up the sound.

If a civilian lawyer represents you, your detailed defense counsel will continue to represent you as well, and this detailed defense counsel will be permitted to be present during the presentation of all evidence.

Do you understand that?

ACC: Yes, I understand that.

PO: Now we are about to get to where you are going to want to tell me something.

My next question, Mr. al Bahlul. Do you have any questions about your right to counsel before this Commission?

ACC: Regarding the defense counsel here present in the military form and this Military Commission and according to your

1 laws of which I hear part of them from you today and I
2 read some of it previously, but I was told that it changes
3 from a minute to another. And I considered what you have
4 just said and the last and most accurate laws. So,
5 therefore, the defense counsel, what is called the defense
6 counsel, since he was imposed on me; this means that you
7 deny me the right to choose on a free basis a lawyer that
8 I want myself. And since I am denied this right to
9 appoint a lawyer, I have the right to appoint my lawyer
10 and I have the right to refuse your laws that you impose
11 on me, the military laws that you impose on me. And if
12 there is a civilian lawyer that is voluntary, I will not
13 want that civilian lawyer.

14
15 PO: Excuse me for a second. I didn't understand. You said
16 there is a civilian lawyer and I didn't quite catch what
17 you said after there's a civilian lawyer. If you could
18 please repeat that for the translator to repeat it.

19
20 ACC: I will be clear. I said since I am denied the right to
21 choose a lawyer that I appoint myself by writing or

1 directly, a lawyer from anywhere I want -- I choose, I
2 refuse for any military defense counsel to be imposed on
3 me based on your military laws.
4

5 And in addition, if there was a lawyer that imposed
6 himself on a voluntary basis and if he was a civilian
7 lawyer, I would not accept the services of this lawyer
8 because he is American. And that doesn't mean -- that
9 doesn't mean that I hate all Americans. That means I hate
10 or I'm the enemy of all Americans who fight. I did not
11 say that I hate, but I say that I regard them as
12 enemies -- because I heard the word hate and I would like
13 to correct that.
14

15 PO: I have heard what you have said. I want to make sure that
16 I understand what you said because I got to ask you if you
17 understand what I said, so we'll go back the other way.
18

19 I heard you say that you do not want to have a military
20 lawyer imposed upon you; is that correct?
21

1 ACC: Yes, that's correct. I do not wish for a military lawyer
2 to be imposed on me.

3

4 PO: Okay. The second thing I heard you say was that you do
5 not want to have a civilian lawyer imposed upon you?

6

7 ACC: What I said is let's suppose that a civilian lawyer
8 imposed his services or volunteered -- volunteered, if a
9 civilian lawyer volunteered and was not imposed on me,
10 even in that case, I refuse the services.

11

12 PO: Okay. There. Now we understand what we are saying. I am
13 going to take note that Mr. al Bahlul currently has a
14 habeas corpus petition pending in the District Court for
15 the District of Washington D.C..

16

17 ACC: Do you mean, do I have a habeas corpus here in a military
18 and civilian courts in the United States?

19

20 PO: There -- I am -- what I said was, "I am taking note."
21 That means I know. That I am telling everyone I know that

1 at this moment there is a petition before the District
2 Court for the District of Columbia in which lawyers have
3 asked on your behalf, representing you that the Court do
4 something. Those are -- apparently I've just seen the
5 documents. I've never met them -- those are apparently
6 members of a bar of the state. The people that I've
7 described in the civilian lawyer right. If one of them
8 volunteered to represent you here, would you want one of
9 those people to represent you?

10
11 ACC: I heard the judge say that I have appointed voluntary a
12 volunteer lawyers? I would like to tell the judge and the
13 people present here that I never appointed any civilian
14 lawyers, not directly, and not in writing. And I am
15 surprised to hear that from you. This is not because --
16 I'm not surprised that some people volunteered their
17 services. Many people would like to volunteer in this
18 case just to get some fame. They ask for fame. They want
19 fame for themselves and I do not appoint anyone by writing
20 or even by inference. Many Americans can do what they
21 want. They can tell the world that they -- I have a

1 lawyer and while I don't have a lawyer. And I'm stuck
2 here and I don't know what is happening.

3
4 PO: Okay, please -- okay, Mr. al Bahlul you speak very rapidly
5 as I do. However, they need to translate, so if I hold my
6 hand up, all that means is please slow down so they can
7 translate. The -- Prosecutor, I want you to obtain from
8 whatever sources the last two or three filings in the --
9 you don't have to stand up --

10
11 This is a direction this is not a colloquy. The last two
12 or three filings in the District Court -- I believe that
13 the Chief Clerk of Military Commissions, Mr. Harvey, may
14 have them. So that the record will show that I just
15 wasn't making up that people were presenting themselves.
16 And if you will make -- the last two filings in the
17 District Court on behalf of Mr. al Bahlul.

18
19 Do you understand?
20

1 TC (LtCol [REDACTED]: Yes, sir. Just to make the record clear,
2 there is a civil action filed in the United States
3 District Court.

4

5 PO: Well, I understand. Just attach it.

6

7 TC (LtCol [REDACTED]: Attach it?

8

9 PO: Well, we'll -- bring it and show it. We'll get it
10 attached. That's all I want.

11

12 TC (LtCol [REDACTED]: We also -- I also have the names of the
13 four lawyers that purport to represent him, sir.

14

15 PO: It will be on the bottom.

16

17 TC (LtCol [REDACTED]: Okay.

18

19 PO: Okay. Okay now that we've got that out of the way. My
20 now understanding is you don't want any civilian lawyer
21 who is an American citizen no matter what, right?

1

2 ACC: I do not want the services of any volunteer civilian
3 lawyer.

4

5 PO: Okay. And further, you have told me that you don't want
6 to ask -- listen, stop -- you don't want to ask for any
7 lawyer?

8

9 ACC: Regarding any request, this is a good point that you
10 brought up and I thank you for it. Regarding a request
11 for a lawyer to represent me, in August of 2004,
12 previously, I told the same judge in front of me today
13 that if I'm allowed to have a lawyer from Yemen, and I
14 spoke of that during -- in that tribunal. It was me. And
15 the judge told me that there were two points that he
16 wanted to talk about with his supervisors so that he could
17 receive an answer. And the court session ended on that
18 basis.

19

20 PO: I was there and I remember. Okay. As I told you then and
21 I'll tell you now, first of all the Military Commission

1 order requires that you have a detailed counsel. A
2 detailed military lawyer and that's Major Fleener. You
3 have told me that you don't want him and I understand
4 that, so there's no point discussing that for the moment.

5
6 You told me, and this is all available in the transcript
7 of the session in August of 2004, that you knew a Yemeni
8 lawyer and if you could have a Yemeni lawyer that that
9 Yemeni lawyer or some other Yemeni lawyer whom you
10 trusted, you would want him. And I told you at that time
11 that the Military commission order forbade that.

12
13 In the interim, there has been a lot of research done on
14 this and the answer was received that those laws stay as
15 they are. I can't change that. However, you then went on
16 to tell me that not only did you not want a lawyer, you
17 wanted to represent yourself.

18
19 Is that still what you want?
20

1 ACC: Regarding representation, we left the last meeting on the
2 basis I understood that you were going to give me the
3 answer regarding whether I will be allowed to represent
4 myself or not. And as I was in my cell, Phillip Sundel
5 came to me and brought me a series of documents and he
6 said that the government decided that I was not allowed to
7 represent myself. I did not consider that to be an
8 official response because the judge told me that he was
9 going to give me the response.

10

11 PO: And I am here today.

12

13 ACC: And I am waiting for your response.

14

15 PO: You are going to get it, Mr. al Bahlul.

16

17 ACC: Thank you.

18

19 PO: Okay. Is it still your desire to represent yourself?

20

1 ACC: At the beginning of this session, I told the judge that I
2 had some things that I needed to say and he told me that
3 he was going to give me an opportunity later on to do so.
4 And I would like to say what I have to say before he gives
5 me his answer -- before I give him the answer.

6
7 PO: Okay, Mr. al Bahlul I will now let you say what it is you
8 want to say. However, I am telling you that I have to
9 hear what you say and I have to understand what you say.
10 And so, when you start talking very rapidly, I am not
11 being, I am not able, they are not able to translate as
12 fast. So if you will do it in very short burst.

13
14 So now you -- I will tell you -- I will tell you right now
15 if you will remember, you made a statement at the end of
16 our last session and I stopped you from speaking. I'm not
17 going to say what the statement was, but if you get into
18 matters that in my opinion might be adverse to your
19 position, be aware that I will probably stop you. So just
20 so you know that. So now you can tell me what it is that
21 you wanted to say.

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20

ACC: It's not what the judge said here in the last session.
It's not on the same style of declarations made by the
judge.

These are the causes and circumstances of the decision
that I am taking right now. This has to deal with the
question asked by the judge previously, just a few minutes
ago, about whether I still want to represent myself.

Is it possible for the judge to give an opportunity to
read these causes and circumstances? Would the judge give
me the opportunity to read these nine points?

PO: Mr. al Bahlul, as I just told you, I will give you the
opportunity right now to say what it is you want to say.
If you start on an area where I believe you are about to
say something that could harm you, I may stop you. I have
not seen you since August of 2004. I do not know what you
want to say. I am willing to listen, but I am not going

1 to let you harm yourself in my courtroom if I can help it.
2 With that said, tell me what you want to say.
3

4 ACC: I want to thank the judge for what he just said now about
5 not allowing me to harm myself in his court. And this is
6 something very positive from the judge, but at the same
7 time with all of my due respect to the judge, Presiding
8 Officer, I need to know what he said -- he needs to know
9 what I need to tell him. And if I speak about some points
10 and the judge sees that they are harmful to me and since
11 the judge is the one who directs this court and he knows
12 everything about it, and if the judge raises his hand I
13 will stop speaking.
14

15 I will read slowly, bit-by-bit so the translation can be
16 done. These nine points are the background of the causes
17 and circumstances behind my decision which I will take
18 today in this court, and which will also be related to the
19 next hearings and the next sessions, and up until the
20 final judgment and even beyond that. For causes and
21 circumstances including:

1
2 First, because you are an enemy and the Nation of Muslims,
3 you corrupt their religions and their life and you steal
4 their wealth.

5
6 Second, because of the great injustice that is carried out
7 by your allies, the Jews on the Muslims in Palestine --
8 Muslims, Palestine. The occupied Palestine and your
9 support and your help to them.

10
11 Third, you are not the only ones who are persecuting me --
12 who are working against us. You are not the only ones who
13 are taking us to court, to trial. You are not the ones
14 who are prosecuting us. You are not the only ones
15 prosecuting us, but us, we have also things that we can
16 prosecute you for. And we have rules and evidence and
17 documents for it because we are prisoners of war and legal
18 combatants based on our religion -- based on our religion,
19 and our religious law, and it is not -- we do not care
20 about anything -- about anything that you call us and any
21 kind of feelings that are based on what you call us;

1 prisoners or detainees or unlawful belligerents, or any
2 other names that you give us based on your earthly laws
3 and international earthly laws.
4

5 Fifth, in an attempt by some of the investigators to draw
6 the Yemeni government, to involve the Yemeni government in
7 the USS Cole bombing; and Aden, where I personally was
8 subjected to an intense questioning from the US
9 intelligence in Qandahar regarding this issue. Also, what
10 some have been subjected to. What the brother has been
11 subjected to. Brother Zarhawi had -- of torture and
12 investigations carried out in Jordan by Abu Rai, the
13 investigator and his group in general. And regarding this
14 point specifically, the involvement of the Yemeni
15 government in the USS Cole incident.
16

17 Sixth, because of the secret evidence issue.
18

19 Seven, because --
20

1 PO: I'm sorry. I hate to interrupt the flow. "Because of the
2 secret evidence issue." That's -- is that number, that's
3 is number six. Is that correct? Is that correct, Mr. al
4 Bahlul?

5
6 ACC: Yes.

7
8 PO: Thank you. Go on to number seven. I apologize.

9
10 ACC: Secret evidence.

11
12 PO: That's good.

13
14 ACC: Seven, because of the racial discrimination based on
15 nationality and the division of the world by the United
16 States into a third -- consecutive third world. The US
17 government has declared previously that they were six
18 people that were accused, two of them were British and
19 they were not subjected to military trials because they --
20 or Britain refused that anyone carrying the British
21 citizenship is subjected to this trial even if he was

1 Muslim to not be subjected to this military trial. Even
2 though it is an illegal military trial.

3
4 Eight, denying me the right of free choice of a non U.S.
5 lawyer and a noncombatant lawyer, a mutual lawyer.

6
7 Nine, the bailiff and the investigator, the person who
8 whips -- the whipper. Whether it is somebody who whips
9 directly or indirectly, a man who carries out torture --
10 and the defense counsel and the prosecutor, the judge, all
11 of them are Americans. So how can there be a tribunal, a
12 court, a complete court, and a fair court as long as they
13 do not -- when they do not accept our rules, our laws.
14 And we are not going to accept their rules and their laws.

15
16 I know that I am detained in their hands and they will
17 implement their laws as they wish. So between us and
18 them, there is going to be the tribunal of God on the day
19 of judgments.
20

1 And therefore, I am telling the judge do what you have to
2 do and rule however you have to rule. This life will go
3 on and will be gone at one point. Because you are going
4 to be ruling in this life, this earth, and God will rule
5 based on justice. And those who call upon other than God
6 are not calling about anything.

7
8 Allah is all hearer, all seer.

9
10 These nine causes -- with these nine causes, I am -- I am
11 boycotting all sessions even if I am forced to be present
12 and if -- or if I am pulled away. If the judge considers
13 this a bad behavior by the accused, I will raise this
14 [indicating] paper and this word is "boycott." I am
15 boycotting every session. I am boycotting every session.

16
17 This is -- this boycott is the result of a rejection and
18 objection of and causes and circumstances that I am
19 convinced of and I believe, and it doesn't matter to me if
20 you believe these -- the same things or not.

1 And therefore, there is an objection, a boycott. Boycott.
2 Boycott. And I would like to just for -- just to be
3 polite to keep this headset and not say a word. Thank
4 you.

5
6 PO: Mr. Bahlul, before you fold up that document, could I get
7 the bailiff to take it and make a copy so I can put into
8 the record what is was you held up?

9
10 Bailiff you will -- let the record reflect the bailiff is
11 retrieving -- just -- just -- no. Just the front part of
12 the document, Mr. al Bahlul. Just let me do my part
13 first.

14
15 ACC: You can make a copy of this document that says, "boycott"
16 and it will also include my signature. I am signing it
17 now in front of everyone present here.

18
19 PO: Fine. The bailiff will take it.
20

1 ACC: And I am writing it out in English as well. The word
2 "boycott." And this is my signature. Today is the 11th
3 of January 2006, eleventh of the Hijri month of the 12th
4 month 1426 Hijri calendar. And the -- one of the
5 coincidences is that the 9/11 is the same 9/11 in this
6 Hijri calendar and the Gregorian calendar. And the same
7 also -- the dates of my session here is also the same date
8 in -- according to the Hijri calendar.

9
10 I thank you and I am boycotting.

11
12 PO: Let the record reflect that the bailiff has retrieved a
13 one-half page of paper which he will take and make a copy.
14 He will return the original to Mr. al Bahlul. He will
15 provide the copy to the court reporter who will mark it at
16 whatever RE will be up to by then.

17
18 Thank you bailiff.

19
20 Mr. al Bahlul, please, before you boycott, can I ask you a
21 couple more things?

1
2 Okay. The PO is the Presiding Officer is describing for
3 the record. After that last question, Mr. al Bahlul put
4 his hands in front of his face and made an indication
5 which to the Presiding Officer indicated that he was not
6 going to say anything or do anything.

7
8 He further removed the headsets -- the headset -- procured
9 I might mention at great cost to me to get it in here,
10 from his head and apparently is now only listening to the
11 English speaking that I'm doing.

12
13 Before we proceed, I am going to take a -- you need ten
14 minutes to get him down the hall?

15
16 Okay I am going to take ten minutes to a -- for a short
17 recess and we will come back in.

18
19 The commission hearing recessed at 1119, 11 January 2006.
20

1 The commission hearing was called to order at 1132,
2 11 January 2006.

3
4 PO: The commission will come to order. Let the record reflect
5 all parties present when the commission recessed are once
6 again present in the courtroom.

7
8 During that last recess, the bailiff handed the boycott
9 sign to the court reporter who has marked it as RE-135.

10
11 Bailiff, did you hand the original back to the Mr. al
12 Bahlul?

13
14 BAI: Yes, I did, sir.

15
16 Okay. He says he did in case y'all couldn't hear that.
17 The court obtained and provided to the court reporter the
18 District -- one of the district court filings to which I
19 referred. And it has been marked as RE-136.

1 ATC (Maj [REDACTED]: Excuse me, Mr. Presiding Officer. The
2 translators have the ability to broadcast the English to
3 Arabic translation into the court. Would you like them to
4 do that?
5

6 PO: Nope. The court has provided Mr. al Bahlul a set of
7 headphones in which he will get translations from English
8 to Arabic. Mr. al Bahlul referring back to the transcript
9 of the August 2004 session is approximately 37 or 38 years
10 old and he had then 16 years of formal education. Mr. al
11 Bahlul has made a choice not to listen to the proceedings
12 through the headset. The headset I note is on the desk in
13 front of him. If he wishes to pick them up, Mr. al Bahlul
14 may make that choice. I am not going to force that choice
15 on him, okay?
16

17 ATC (Maj [REDACTED]: Yes, sir.
18

19 PO: As Mr. al Bahlul stated in his earlier comments when we
20 met in August 2004, I told him that I would give him and
21 answer on his request to go pro se. I am now going to

1 give the answer on his request to go pro se. This will be
2 reduced to writing and appended to the record as an RE at
3 a later time. There are two separate, distinct, and
4 independent reasons for my ruling.

5
6 The first separate, distinct, and independent reason for
7 my ruling, I will make further particularized findings
8 later as I stated, but it is that Mr. al Bahlul is not
9 competent to go pro se because he has stated on the record
10 in open court that he is boycotting the proceedings and
11 that he will not participate in the proceedings.

12 Obviously a person who will not participate in the
13 proceedings cannot represent himself. Consequently along
14 with other particularized findings which I will append to
15 the record, he would not be competent to go pro se.

16
17 Second separate, distinct, and independent reason is that
18 the Presidential Military Order, the Military Commission
19 Order Number 1 and Military Commission Instruction Number
20 4 require that Mr. al Bahlul be represented by detailed
21 counsel at all times.

1
2 My ruling, therefore, is that Mr. al Bahlul may not go pro
3 se.
4

5 TC (LtCol [REDACTED]): Mr. Presiding Officer. If I may suggest a
6 third grounds to append to your ruling. He also stated
7 that he was not going to accept our rules and our laws
8 which of course is something that you would have to accept
9 at any court or any proceeding in order to represent
10 yourself such as he stated that he would not.
11

12 PO: I will prepare a draft ruling and provide it to counsel
13 for both sides and if they want to expand upon my rulings
14 or suggest something else, they may. But I am satisfied
15 right now with my two reasons.
16

17 Major Fleener, please move up to the counsel table.
18

19 Major Fleener did as directed.
20

21 DC: Sir, is this an order; should I consider it an order?

1

2 PO: Do you need an order, Major Fleener?

3

4 DC: I believe I do, sir. And I am not trying to be

5 belligerent.

6

7 PO: And I just said, "Do you need an order?"

8

9 DC: Yes, Your Honor.

10

11 PO: Okay. Major Fleener, move to the counsel table.

12

13 Major Fleener did as directed.

14

15 PO: Please announce your detailing and qualifications.

16

17 DC: I've been detailed to this Military Commission by the

18 Chief Defense Counsel. I am qualified under Military

19 Commission Order Number 1, Paragraph 4C and I have been

20 previously sworn. I have not acted in any manner that

21 might tend to disqualify me in this proceeding. I believe

1 the document detailing me has been marked as a Review
2 Exhibit.
3
4 Your Honor, at this point I move to withdraw.
5
6 If I may, sir --
7
8 The Presiding officer held up his hand.
9
10 DC: Yes, sir.
11
12 PO: Bailiff, if you will go to Mr. Hodges and get a copy of
13 the detailing document, please, for Major Fleener.
14
15 Bailiff did as directed.
16
17 PO: Okay, Major Fleener you are up. Tell me why you move to
18 withdraw.
19
20 DC: I have been asked to withdraw by Mr. al Bahlul. He
21 doesn't want my representation and I believe Rule 1 Point

1 16 requires me to move to withdraw in that situation and I
2 therefore do so. And I believe it would be prudent --

3
4 PO: Can you speak -- can you push the mic up so everyone can
5 hear what you are saying.

6
7 Defense counsel did as directed.

8
9 PO: Okay. Go on.

10
11 DC: I believe it would be prudent. I have a -- I understand
12 that there is an opinion from the Army Standards of
13 Conduct office on this issue.

14
15 PO: Please speak up. Really.

16
17 DC: I understand that there is a Standards of Conduct Opinion
18 on this issue from the Army. I also do note that I have
19 requested guidance from the bar of Iowa and I will be
20 requesting guidance I am in the process of figuring how to
21 request guidance from the bar of Wyoming regarding the

1 continued -- my continued participation in this case. And
2 I would ask that before the Court places me in a position
3 where I may be violating my rules of professional conduct
4 that we wait to hear what the state licensing authorities
5 have to say, sir.

6
7 PO: Let the record reflect I'm handing the court reporter the
8 detailing document, dated, 3 November 2005, which will be
9 marked as the next review exhibit in line.

10
11 Reporter marked exhibit.

12
13 PO: That document is RE-137.

14
15 Okay, Major Fleener, you and I have talked briefly, but
16 let's put this on the record.

17
18 You are not -- a mere three months ago you were not in the
19 Army, correct?

20
21 DC: I was in the Army Reserve, sir.

1

2 PO: You were serving as a --

3

4 DC: I was an Assistant Federal Defender in Cheyenne, Wyoming.

5

6 PO: Okay. You were recalled for active duty, were you ordered
7 to active duty or how did you get here?

8

9 ACC: I believe I was ordered to active duty. I was mobilized,
10 sir.

11

12 PO: You had no choice as an involuntary recall?

13

14 DC: I don't know whether it was an involuntary recall or not.
15 It was -- most Army reservist are being activated and it's
16 always sort of quasi-voluntary.

17

18 PO: Okay. When did you learn that you were going to be
19 recalled for this?

20

1 DC: I believe -- and I'm -- I don't know for sure. I believe
2 somewhere around the middle part of September, sir.
3
4 PO: Of 2005?
5
6 DC: Yes, sir.
7
8 PO: Okay. When you were recalled, I presume -- okay, the
9 court will take note that Colonel Sullivan is the Chief
10 Defense Counsel. Did you talk to him before you were
11 recalled?
12
13 DC: We spoke about me coming on yes, sir.
14
15 PO: When did you first learn that you were going to be
16 representing Mr. al Bahlul -- that you were going to be
17 detailed as that document shows to be representing Mr. al
18 Bahlul?
19
20 DC: I received formal notification of the detailing on
21 November 3rd, sir.

1
2 PO: You didn't know it before then?
3
4 DC: That I was going to be detailed?
5
6 PO: Yes.
7
8 DC: I suspected I was going to be detailed on this case, Your
9 Honor, earlier.
10
11 PO: Before you were recalled, did you know about -- I mean,
12 had you done the standard lawyer stuff? Okay, I am going
13 to work to commissions so I'm going to look at the
14 commission order and the PMO and the MCI and stuff like
15 that?
16
17 DC: No, Your Honor. I had a full case load I was trying to
18 close.
19
20 PO: Okay. You are a member of the bars of Iowa and Wyoming,
21 correct?

1

2 DC: I am.

3

4 PO: Okay. Review Exhibit 128 is a request you made to the
5 Iowa bar for an opinion dated, what, 3 January of 06 and
6 then on the -- on RE-130 is a request you made to SOCO,
7 that's the Army -- US Army Standard of Conduct Office
8 dated, 4 January. When did you first learn that Mr. al
9 Bahlul had refused to meet with prior counsel?

10

11 DC: Probably -- probably around the first of September, sir, I
12 imagine. That's give or take a couple of weeks either
13 way, sir.

14

15 PO: I did not detail you to this case, Colonel Sullivan
16 detailed you to this case. Did you request to -- did you
17 submit a request to withdraw to Colonel Sullivan?

18

19 DC: I did.

20

21 PO: When was that?

1

2 DC: I submitted a request back in December. I didn't hear an
3 answer. I then submitted a request in January. There was
4 a question whether it was a request to withdraw because I
5 didn't believe I had established an attorney/client
6 relationship therefore need no reason to withdraw or
7 whether it was a request to be relieved from those
8 particular duties, so I resubmitted my requests. I --
9 both requests were denied orally by Colonel Sullivan.

10

11 PO: Okay. So you have not received a written response, but he
12 has orally denied your request to withdraw from whatever
13 it was that you were doing or not doing.

14

15 DC: Yes, Your Honor.

16

17 PO: Okay. Please after this session provide the parties with
18 copies of your request so they can be appended -- to
19 Colonel Sullivan.

20

21 DC: I may not have the original document with me --

1

2 PO: That's all right. Copies. Copies are fine.

3

4 DC: Yes, sir.

5

6 PO: Other than this morning, have you ever met with Mr. al
7 Bahlul?

8

9 DC: I have not.

10

11 PO: Today was the first time?

12

13 DC: It was, sir.

14

15 PO: Okay. Have you ever tried to meet with him before today?

16

17 DC: It depends on what, Your Honor, means by the word "tried."
18 And I'm not trying to be snide. My instructions were that
19 Mr. al Bahlul did not want to meet with me. I believed
20 those instructions and I believed that those were Mr. al

1 Bahlul's wishes, so I did not go to the camp to meet Mr.
2 al Bahlul.

3
4 PO: Okay. I am confused why you didn't seek an ethical
5 opinion from your state bar -- either of your state bars
6 prior to 3 January. As you know I sent a request to SOCO
7 which is Review Exhibit 119 on the 6th of December and I
8 received a response from that -- to that request fairly
9 rapidly within a month. Why did you take so long to ask
10 the state bars? Have you asked Wyoming yet?

11
12 DC: There is no -- No I have not. There is no formal
13 mechanism in place to ask Wyoming and that's one of the
14 things I am working on to try to get this issue answered
15 by somebody. And I can -- I can speak to -- to both
16 states and why it has taken me so long to submit my
17 request. As far as Iowa goes -- and I don't mean any
18 disrespect, Your Honor. I saw your request to the
19 Standards of Conduct Office. I sought the advice of my
20 own attorneys and I think it took me a while -- it took us
21 a while to get the questions in place that we thought at

1 the time were the relevant questions which may not be the
2 relevant question now after today's proceedings.

3
4 PO: There's that, Major Fleener. There sure is that.

5
6 DC: Yes, sir. The second -- and I -- as everyone is busy.
7 I've been on this case for two months. I've had one trip
8 to Cuba. I actually -- as, Your Honor, knows I was
9 detailed onto a court-martial. I'm the only person in the
10 courtroom that's actually had a trial in the last several
11 months. I had a trial in December Fort Sill, Oklahoma.
12 And I -- to be quite frank, I've been working very very
13 hard trying to understand what my obligations are, but
14 every move I make has to be well thought out and at least
15 deliberative. I'm doing my best.

16
17 PO: That's why we are here, Major Fleener. Okay --

18
19 DC: I spoke with state of Iowa yesterday because I knew Your
20 Honor's question might come up. They expect to have an
21 opinion within 30 days to the question that was asked. I

1 intend to go -- I have a meeting with some folks in
2 Wyoming over the phone to try to figure out a way to get
3 this thing to a decision maker up there tomorrow and I
4 hope to have the ball rolling on that as well. That is,
5 of course, the issue may be different and I need to -- I
6 need to analyze the issue so I haven't been dilatory, sir,
7 I've been doing the best I can.

8
9 PO: You said "dilatory" not me, Major Fleener.

10
11 DC: I know, sir.

12
13 PO: When I say that, you'll know it.

14
15 DC: Yes, sir.

16
17 PO: Major Fleener, although you've asked me to -- you've
18 requested that I let you withdraw. You are well aware of
19 the President's Military Order MCO 1 and MCI 4 and are
20 well aware after reading those as an attorney that the

1 President and the Secretary have directed that there be
2 representation at all times.

3
4 DC: Yes, sir. I'm certainly aware of that.

5
6 PO: Okay. I do not grant your request to withdraw. If
7 Colonel Sullivan details another counsel, we might have a
8 different situation, but Colonel Sullivan has not detailed
9 another counsel. You are de facto and de jure, the only
10 counsel that Mr. al Bahlul has. And as he pointed out
11 earlier, it's him against the United States. You are the
12 only one on his side. I understand your concerns.

13
14 However, referring -- I don't believe I mention RE-129 is
15 the SOCO opinion which -- to which Major Fleener and
16 myself have been referring and the -- Major Fleener's
17 request to the Iowa bar is RE-128. Referring to the
18 opinion, your request for opinion, I note that you might
19 at this time consider it does not reflect the state of
20 affairs that we have now. In that, you state in there
21 that there have been no particularized findings. I would

1 suggest that any opinion that you receive from Iowa based
2 solely upon that statement would not be one that would
3 reflect the true situation.

4
5 Go on.

6
7 DC: And I would -- I don't necessarily agree with the Court
8 but I certainly understand your position. I would note
9 and this was a very difficult situation based on lots of
10 things, that I believe Mr. al Bahlul decision to not want
11 to take part in these proceedings were based in fact,
12 because he thought you had denied his right to represent
13 himself, and that his decision to boycott may very well
14 not have been made had, Your Honor, granted him that
15 right. And I would ask that if before, Your Honor, denies
16 my request to withdraw and rule -- and decides that this
17 was a specific finding, that there be a recess in place
18 either later today or until tomorrow where I can explain
19 that to Mr. al Bahlul. Because I believe that if -- if
20 his -- I believe his boycott was based in fact on your --
21 his belief that, Your Honor, had denied his request to

1 self-represent. I was unable to advise him of anything
2 because I couldn't sit at the table because he asked me
3 not to. But there may have been a very different answer
4 had or a very different response had that information been
5 relayed. Had you spoken first before he spoke, we may not
6 be in this situation. And before a person's right to
7 self-represent and have an attorney forced on him and a
8 situation like this is taken away, I would request at
9 least a day to reflect and hopefully speak to Mr. al
10 Bahlul about the situation.

11
12 PO: Okay. So there's no question. You don't have to worry
13 about me ruling on your request. I've already done that.
14 It's been denied.

15
16 DC: Okay.

17
18 PO: You may not withdraw. You are not withdrawing. You are
19 his detailed counsel and you are representing him. Okay,
20 so there's no question about that. I made my ruling on
21 pro se and you heard it. There were two, what were the

1 words I used, separate, distinct, and independent reasons
2 for my ruling. And I will append particularized reasons
3 to the record. Therefore, I am not willing to go back and
4 reconsider anything -- now -- now that's not true. I'll
5 reconsider lots of stuff, but I'm not going to hold off
6 doing now things that I might need -- that I need to get
7 going. Go on. Go on. I'm listening.

8
9 DC: Okay. One of the rulings, one of the reasons that you
10 gave was if I'm not mistaken, I didn't write them down,
11 but one of the ruling, one of the reasons you gave was Mr.
12 al Bahlul's apparent boycott of the proceeding.

13
14 PO: Apparent?

15
16 DC: Yes, sir. The other -- the other ruling was on fact or on
17 point with my request which was if the rules don't allow
18 for it and that we -- because the rules don't allow for
19 it, we -- you have to have a lawyer and you can't
20 represent yourself. I believe number one could have been
21 cured the first reason could have been cured where if you

1 were to deny him it would be based on number two which
2 would be on point with my request of Iowa and my request
3 to the Standard of Conduct Office.
4

5 PO: Well I will get with the Chief Clerk of Military
6 Commissions and you can, and when you send your appendix to
7 the State bar of Iowa or if you don't, I'll have him do
8 it. He will append the August 2004 transcript, the
9 transcript of today's session and if that helps them in
10 their consideration they can be helped. But we are where
11 we are now and you are now and have been representing Mr.
12 al Bahlul. That does not mean, Major Fleener, that I am
13 going to order you to start trial today, but you have now
14 got the order you want from a tribunal and we are going to
15 proceed.
16

17 Any questions?
18

19 DC: I'd like to place one thing on the record, sir.
20

21 PO: Sure. You can place anything you want on the record.

1

2 DC: Yes, Your Honor. I'd like the record to reflect that the
3 August 2004 transcripts where Mr. al Bahlul said he wanted
4 to represent himself that Mr. al Bahlul believed you
5 denied that before he spoke today. And that his boycott
6 of these proceedings, I believe, were in great part on the
7 belief that you had already denied the right to
8 self-represent which you hadn't done already. And that I
9 would -- I would request that the hearing be reopened, his
10 right of counsel inquiry, at a later date.

11

12 PO: You are representing him. If you want to make some
13 request at a later date I'll think about it. That's all I
14 can say. Okay.

15

16 TC (LtCol [REDACTED]): Mr. Presiding Officer, I'm confused now.
17 Is he going to be representing him or are we going to have
18 to wait until he gets these ethics?

19

20 PO: Pardon?

21

1 TC (LtCol [REDACTED]): Is he going to actively represent his
2 client or are we going to have to wait until he gets his
3 ethics opinions from his state bar? My understanding of
4 the Army one is they've already said that it's ethical for
5 him to go forward under Rule 1 point 19.
6
7 PO: Okay. Go on. You are up, what do you want to say?
8
9 DC: Your Honor, the Army's opinion didn't say that. The
10 Army's opinion said, yes you can make somebody represent
11 somebody and then it provided a great warning to the Court
12 saying; however, if there is -- a lawyer can't force an
13 attorney or shouldn't force an attorney to do something
14 which he believes is unethical if you are serving as a
15 judge.
16
17 PO: Something that is unethical?
18
19 DC: Right.
20
21 PO: Okay.

1

2 DC: Your Honor, recognize that there was some issue out there
3 because you requested from the Standard of Conduct Office
4 yourself that there was an opinion.

5

6 PO: You're right, I did.

7

8 TC (LtCol [REDACTED]): In response to you raising the issue --

9

10 PO: Now, okay, please.

11

12 DC: The -- I would also point out that the instruction the
13 appointing authority's instruction --

14

15 PO: The what?

16

17 DC: There actually is an appointing instruction. I was
18 shocked myself, but there's an appointing order
19 instruction that says when there is a conflict that the
20 legal advisor for the appointing authority shall seek the

1 advice of the Standards of Conduct Office from the service
2 of the attorney. That hasn't been done yet in this case.
3

4 PO: I have -- so there's no question. I thought I didn't -- I
5 thought there wasn't any question, but apparently there
6 is, trial or prosecution, excuse me. Major Fleener was
7 detailed. His duties are explained in MCI 4. He has
8 asked to withdraw. I have denied that request to withdraw
9 and he is now representing Mr. al Bahlul.
10

11 TC (LtCol [REDACTED]): Sir, since 3 November of this year he has
12 been detailed to represent Mr. al Bahlul. He has
13 steadfastly refused to take any steps toward moving this
14 commission process along. So the fact that he is now told
15 that again that he is representing Mr. al Bahlul doesn't
16 necessarily say that he's going to -- whether or not he's
17 going to continue to move forward or whether he's just
18 going to sit on his hands.
19

20 PO: Luckily, Colonel, you've got me now.
21

1 TC (LtCol [REDACTED]): Thank you, sir.

2

3 PO: Okay. All personnel appear to have the requisite
4 qualification, and all personnel required to be sworn have
5 been sworn.

6

7 The charge sheet is marked as RE-103 and will be attached
8 to the record.

9

10 Have you previously been provided a copy of the charges?

11

12 DC: I have, Your Honor.

13

14 PO: Okay.

15

16 DC: Since I represent Mr. al Bahlul, I move that you abate the
17 proceeding to the legal advisor for the appointing
18 authority goes to the Standards of Conduct Office for the
19 Department of Defense consistent with the appointing
20 authority instruction and seeks an -- ethics.

21

1 PO: Okay, that motion to abate is denied. However, you have
2 full authority to write the appoint the Legal Advisor to
3 the Appointing Authority.
4

5 DC: Does, Your Honor, not believe that you have to -- that the
6 Appointing Authority has this obligation to do that and
7 that the proceedings can't go forward until the Legal
8 Advisor for the Appointing Authority seeks that opinion?
9

10 PO: What do you mean?
11

12 DC: Well the instruction that I read was fairly clear that
13 when there's a --
14

15 PO: Okay. Do you have the instruction?
16

17 DC: I don't have the instruction with me.
18

19 PO: Okay. I am not going to make a ruling based upon an
20 instruction that I do not have and have not seen. I have
21 sought advice from the standards of conduct personnel who

1 govern you and me as Army lawyers. You have read that. I
2 have read that. If Iowa or Wyoming comes back based upon
3 a factually and legally correct opinion request, then we
4 may reconsider this. At this time, I have no reason to
5 abate. And I am not going to abate.

6
7 DC: Is, Your Honor, speaking for the Appointing Authority on
8 this issue? I mean you -- you requested the opinion not
9 the Appointing Authority. Does that -- is your request go
10 to the -- should be imputed to the appointing authority?

11
12 PO: Okay. Major Fleener, you are sitting there with no --
13 with nothing to refer to me. If you wanted to refer
14 something to me, you could have done it. You didn't do
15 it. If you want to furnish me something later, you may.
16 If I need to change a ruling later, I will. I am not
17 going to make an abatement based upon some matter that has
18 not yet been shown to the Court.

19
20 DC: Are the instructions present in the court?

1 PO: Major Fleener, sit down. Please sit down. Okay. Just
2 sit down.
3
4 Counsel did as directed.
5
6 PO: There is no question. I am not going to abate it. You've
7 got this entire afternoon. You've got tomorrow. We'll
8 sit here until whenever you can find whatever document it
9 is and provide it to myself and other parties to the
10 Court. I don't know what you are talking about. I
11 haven't seen it and if you show it to me then perhaps
12 we'll have a different matter. Please announce the
13 general nature of the charges.
14
15 ATC (Maj [REDACTED]): Sir, the general nature of the Charge in
16 this case is a conspiracy to attack civilians, to attack
17 civilian objects, to commit murder by an unprivileged
18 belligerent, to commit destruction of property by an
19 unprivileged belligerent and to commit acts of terrorism.
20
21 PO: Does either party want the charges read in open court?

1

2 ATC (Maj [REDACTED]: Sir, the prosecution does not want the
3 charges read.

4

5 DC: I object to being forced to make decisions before -- just
6 for the record I --

7

8 PO: Okay. That's a standing objection. Every time you stand
9 up you don't have to say that, okay?

10

11 DC: Then I ask the charges be read.

12

13 PO: Fine. Read the charges.

14

15 ATC (Maj [REDACTED]: Yes, sir.

16

17 The United States of America versus Ali Hamza Ahamad
18 Sulayman al Bahlul, also known as Ali Hamza Ahmed Suleiman
19 al Bahlul, also known as Abu Anas al Makki, also known as
20 Abu Anas al Yemeni, also known as Mohammad Anas Abdullah
21 Khalidi.

1
2 Ali Hamza Ahmad Sulayman al Bahlul is a person subject to
3 trial by Military Commission. At all times material to
4 the charge:

5
6 Jurisdiction for this Military Commission is based upon
7 the President's determination of July 3, 2003 that Ali
8 Hamza Ahmad Sulayman al Bahlul is subject to his military
9 order of November 13, 2001.

10
11 That al Bahlul's charged conduct is triable by a military
12 commission.

13
14 General allegations:

15
16 Al Qaida ("the Base"), was founded by Usama Bin Laden and
17 others in or about 1989 for the purpose of opposing
18 certain governments and officials with force and violence.

19
20 Usama bin Laden is recognized as the emir (prince of
21 leader) of al Qaida.

1
2 The purpose or goal of al Qaida is stated by Usama bin
3 Laden and other Al Qaida leaders is to support violent
4 attacks against property and nationals, (both military and
5 civilian) of the United States and other countries for the
6 purposes of, inter alia, forcing the United States to
7 withdraw its forces from the Arabian Peninsula and in
8 retaliation for United States support of Israel.

9
10 Al Qaida operations and activities are directed by a shura
11 a (consultation) council composed of committees, including
12 the: Political committee; the military committee; the
13 security committee; the finance committee; the media
14 committee; and the religious/legal committee.

15
16 Between 1989 and 2001, al Qaida established training
17 camps, guest houses, and business operations in
18 Afghanistan, Pakistan, and other countries for the purpose
19 of supporting violent attacks against property and
20 nationals (both military and civilian) of the United
21 states and other countries.

1
2 In August 1996, Usama bin Laden issued a public
3 "Declaration of Jihad Against the Americans," in which he
4 called for the murder of U.S. military personnel serving
5 on the Arabian Peninsula.
6

7 In February of 1998, Usama bin Laden, Ayman al Zawahari
8 and others under the banner of "International Islamic
9 Front for Jihad on the Jews and Crusaders," issued a fatwa
10 (a purported religious ruling) requiring all Muslims to
11 obey to do so to kill Americans - whether civilian or
12 military - anywhere they can be found and to "plunder
13 their money."
14

15 On or about May 29, 1998, Usama bin Laden issued a
16 statement entitled "The Nuclear Bomb of Islam," under the
17 banner of the "International Islamic Front for Fighting
18 Jews and Crusaders," which he stated that "it is the duty
19 of the Muslims to prepare as much force as possible to
20 terrorize the enemies of God."
21

1 Since 1989, members and associates of al Qaida, known and
2 unknown, have carried out numerous terrorist attacks,
3 including, but not limited to: The attacks against the
4 American Embassies in Kenya, and Tanzania, in August 1998;
5 the attacks against the USS Cole in 2000; and the attacks
6 on the United States on September 11, 2001.

7
8 Charge: Conspiracy:

9
10 Ali Hamza Ahmad Sulayman al Bahlul, (also known as Ali
11 Hamza Ahmed Suleiman al Bahlul with a different spelling,
12 also known as Abu Anas al Makki, also known as Abu Anas al
13 Yemeni, also known as Mohammad Anas Abdullah Khalidi, and
14 hereinafter "al Bahlul"), in Afghanistan, Pakistan, Yemen
15 and other countries, from on or about February 1999 to on
16 or about December 2001, willfully and knowingly joined an
17 enterprise of persons who shared a common criminal purpose
18 and conspired and agreed with Usama bin Laden, Saif al
19 Adel, Dr. Ayman al Zawahari also known as ("the Doctor"),
20 Muhammad Atef (also known as Abu Hafs al Masri), Salem
21 Ahmed Salem Hamdan (also known as Saqr al Jadawi) and

1 other members and associates of the al Qaida organization,
2 known and unknown, to commit the following offenses
3 triable by military commission:
4

5 Attacking civilians; attacking civilian objects; murder by
6 an unprivileged belligerent; destruction of property by an
7 unprivileged belligerent; and terrorism.
8

9 In furtherance of this enterprise and conspiracy, al
10 Bahlul and other members or associates of al Qaida
11 committed the following overt acts:
12

13 In 1999, with the knowledge of Usama bin Laden's 1996
14 "Declaration of Jihad Against the Americans: and the 1998
15 fatwa endorsed by bin Laden calling for the "killing of
16 Americans and their allies, both military and civilian,"
17 al Bahlul voluntarily traveled from Yemen to Afghanistan
18 (via Pakistan) with the intent and purpose of joining and
19 supporting Usama bin Laden in his expressed cause.
20

1 In 1999, upon arriving in Afghanistan, al Bahlul met Saif
2 al Adel, the head of the al Qaida Security Committee.
3

4 Based upon arrangements made by Saif al Adel, al Bahlul
5 participated in military training for two months at the al
6 Qaida-sponsored Aynak camp in Afghanistan.
7

8 After completing his training at Aynak camp, al Bahlul met
9 with and pledged bayat to Usama bin Laden. By pledging
10 bayat, al Bahlul affirmed his willingness to perform any
11 act requested by bin Laden and to protect bin Laden from
12 all harm.
13

14 In late 1989, after completing his training at Aynak camp,
15 al Bahlul lived at an al Qaida-sponsored quest house in
16 Qandahar and performed duties in support of al Qaida.
17

18 From late 1999 through December 2001, al Bahlul was
19 personally assigned by Usama bin Laden to work in the al
20 Qaida media office. In this capacity, al Bahlul created

1 several instructions and motivational recruiting video
2 tapes on behalf of al Qaida.

3
4 Usama bin Laden personally tasked al Bahlul to create a
5 video glorifying, among other things, the attack on the
6 USS Cole. Al Bahlul created this "USS Cole" video to
7 recruit, motivate and "awaken the Islamic Umma to revolt
8 against America" and to inspire al Qaida members and
9 others to continue the violent attacks against the
10 property and nationals (both military and civilian) of the
11 United States and other countries.

12
13 After being placed on alert by Usama bin Laden in the
14 weeks just before the September 11, 2001 attacks, al
15 Bahlul assisted Usama bin Laden and other al Qaida members
16 in mobilizing and moving from Qandahar.

17
18 On September 11, 2001, Usama bin Laden tasked al Bahlul to
19 set up a satellite connection so that bin Laden and other
20 members of al Qaida could see news reports. Despite his

1 efforts, al Bahlul was unable to obtain a satellite
2 connection because of mountainous terrain.

3
4 In the weeks immediately following the attacks of
5 September 11, 2001, Usama bin Laden tasked al Bahlul to
6 obtain media reports concerning the September 11th attacks
7 and to gather data concerning the economic damage caused
8 by these attacks.

9
10 In September 2001, al Bahlul served as a bodyguard and
11 provided protection for Usama bin Laden. While traveling
12 with Usama bin Laden, al Bahlul was armed and wore an
13 explosives-laden belt so that he could provide Usama bin
14 Laden with physical security and protection.

15
16 PO: Okay. As I said earlier, I've been detailed to this case
17 by the appointing authority. I've been previously sworn.

18
19 Trial, you got in voir dire for me?
20

1 ATC (LtCmdr [REDACTED]: Sir, just a very few couple questions.
2 We've previously reviewed your voir dire questioning, your
3 biography, answers from previous proceedings through
4 public records so it should be very brief.
5
6 During the previous commission session, the accused had
7 made references that are contained within the record.
8 Specifically with regard to September 11th and the Al
9 Qaida membership which he is charged.
10
11 Do you remember those statements, sir?
12
13 PO: I've read the thing. I remember a reference. All I
14 remember is something like, I'm a member of Al Qaida or
15 something -- it was words of that effect. Go on.
16
17 ATC (LtCmdr [REDACTED]: Well the fact that this statement was made
18 and it is a basis for one of the charges, do you think in
19 any way that that might be able to impact your ability to
20 rule impartially?
21

1 PO: Did you read the rest of that?

2

3 ATC (LtCmdr [REDACTED]: Yes, sir.

4

5 PO: And what did I say?

6

7 ATC (LtCmdr [REDACTED]: Well in fact that you stopped it and you
8 said that "I don't believe that this is evidence" and at
9 that time you required the members that were in the
10 courtroom to disregard that.

11

12 PO: And they agreed with that ruling, correct?

13

14 ATC (Maj [REDACTED]: Oh, absolutely.

15

16 PO: Thank you.

17

18 ATC (LtCmdr [REDACTED]: So my.

19

20 PO: So there.

21

1 ATC (LtCmdr [REDACTED]: Well, my question though is though based
2 on MCO Number 1, because it has changed. Your rule is now
3 besides you'd make legal rulings as opposed to that. I
4 have no real objections to you.
5

6 PO: I don't understand what your question is. If I were -- do
7 you mean -- is the fact that I was sitting here as the
8 Presiding Officer and heard the statement which was
9 garbled at best and inconclusive certainly, is that
10 somehow going to affect my rulings in this case. Is that
11 your question?
12

13 ATC (LtCmdr [REDACTED]: Yes, sir.
14

15 PO: No.
16

17 ATC (LtCmdr [REDACTED]: And in light of the recent decisions and
18 statements made by the accused today to boycott the
19 proceedings. Do you feel that it will have any impact on
20 your ability to be impartial to the accused in this case?
21

1 PO: I will be impartial in this case. I don't -- I'm not
2 impartial towards either side. I'm impartial.
3
4 ATC (LtCmdr [REDACTED]: Yes, sir. Have you reviewed any academic
5 material since or statements from any press,
6 nongovernmental organizations since the recess in August
7 of 2004 regarding commissions?
8
9 PO: I must have seen a bazillion articles about the
10 commissions.
11
12 ATC (LtCmdr [REDACTED]: Any ideas on your ability to be impartial
13 based on these?
14
15 PO: No.
16
17 ATC (LtCmdr [REDACTED]: I said, sir, we've actually done a
18 substantial amount of review of your record, your
19 biography, and we believe that there's no evidence of
20 impartiality and specific or -- let me change that.
21

1 PO: I want to thank you for that.

2

3 ATC (LtCmdr [REDACTED]: No, we believe that there's no evidence
4 that would question your impartiality and we have no
5 challenges and that's especially in light of what we
6 consider the -- your bending over backwards today to make
7 sure that the accused fully knew and understand that and
8 the government has no objection.

9

10 PO: Okay. Defense you got any questions?

11

12 DC: Sir, before I -- may I address another issue?

13

14 PO: Pardon?

15

16 DC: May I address another issue?

17

18 PO: Sure.

19

20 DC: I make a motion to abate the proceedings because this set
21 up with only the Presiding Officer in here and the rest of

1 the commission members is inconsistent with the
2 President's Military Order. Your Honor is on the record a
3 year ago saying that he couldn't have a proceeding without
4 all the other members there. The legal advisor to the
5 appointing authority is on the record as saying the
6 President's Military Order does not allow proceedings
7 outside the appointing authority, outside the presence of
8 all the members. And to my understanding the President's
9 Military Order hasn't changed and this proceeding cannot
10 continue without all of the members of the commission
11 present.

12
13 PO: Okay. You don't mind if I paraphrase your --

14
15 DC: No, Your Honor.

16
17 PO: Okay. What you are saying is that you want me to abate
18 the proceedings because you perceive a fatal flaw between
19 the PMO and MCO Number 1. Namely, you believe that the
20 only way the MCO Number 1 could be correct would be if it
21 said all the commission members have to be here.

1

2 DC: I'm a little confused. I believe what I'm saying is that
3 the President's Military Order trumps all. The
4 President's Military Order says that all the members must
5 be here. So all the members must be here. If Your
6 Honor's goal is -- if, Your Honor, is following the
7 provisions of MCO Number 1 on this issue then, yes, it is
8 a fatal flaw and the proceedings should be abated.

9

10 PO: Okay you are given leave to brief that issue. You believe
11 that there's a fatal flaw, I'll use that term, between the
12 PMO and the MCO.

13

14 DC: I do.

15

16 PO: No, I'm talking.

17

18 DC: Oh, I apologize, Your Honor.

19

20 PO: I'm just talking. You believe there's a fatal flaw and
21 your proposed solution is that we do nothing until this

1 fatal flaw is solved somehow. That's what abatement
2 really means in this case. I will tell you now that you
3 may brief this issue to me. I will consider the issue.
4 If you were to review the documents submitted in the case
5 of US v Hicks, which we stopped back in November -- as a
6 matter of fact you were here in November of 2005. We
7 stopped it. You'll see that that's one of the matters
8 briefed. I am not going to abate the proceedings to wait
9 for someone, an unknown someone to make a decision.
10 However, your request for abatement is noted it's just
11 denied. You may brief it and I will resolve it.

12
13 DC: Your Honor, I would like to voir dire you. I'm not
14 prepared to voir dire you. If I'm forced to go forward
15 and try to voir dire you, Mr. al Bahlul is not going to
16 receive a full and fair trial. Respectfully, I've been in
17 the Army for 70 days and there's been a few issues that
18 have come up other than voir dire.

19
20 PO: Okay, looking at -- now you get to stand up this time.
21 Look at RE-126. I ordered you to prepare voir dire on the

1 16th of December. On 19 December you e-mailed me back and
2 said you really mean this is an order. And on the 20th of
3 December I explained it to you and told you to prepare
4 voir dire. Is that correct? It's all in RE-126.

5
6 DC: That's true.

7
8 PO: Okay. Have you asked for any materials? You heard the
9 trial counsel -- the prosecutor refer to various
10 materials. Have you asked for those materials? Do you
11 have them, you've seen them? You know, the prior sessions
12 and the voir dire materials?

13
14 DC: I have materials.

15
16 PO: Yeah, okay. RE-138 now being given to the court reporter
17 is a collection of various voir dire materials. I believe
18 you have it, Major Fleener, but I'm just putting it on the
19 record so there's no question. It is my opinion that you
20 should have prepared voir dire and that you've had enough
21 time to do it. However, under the circumstances, I am not

1 willing to force -- to force you to undertake that portion
2 of the -- of Mr. al Bahlul's defense. I am concerned
3 about Mr. al Bahlul.
4

5 And before we go on, I want to say this so there's no
6 question on the record. Major Fleener was brought on the
7 case on the 3rd of November 2005. I believe that the
8 senior prosecutor in this case has been detailed to this
9 case since some time in April of 2005. I note that the
10 senior prosecutor has sitting next to him two other
11 prosecutors. And we also heard the senior prosecutor,
12 someone mention a fourth prosecutor. Looking at Major
13 Fleener, I see to his left Mr. al Bahlul, the translator,
14 and I don't see any other help for Major Fleener. No one
15 else. I have not seen any evidence in this case. Based
16 on matters that have been passed in other cases, I
17 understand that there are gillions of gigabytes of
18 material that Major Fleener is going to have to go
19 through. The motions and evidence and discovery are
20 horrendous and I personally do not see how Major Fleener
21 can be expected to adequately represent Mr. al Bahlul by

1 himself, especially given the circumstances in which Mr.
2 al Bahlul is boycotting the proceedings. And I expect not
3 communicating as well with Major Fleener as Major Fleener
4 might like in the best of all possible worlds.

5
6 Therefore, while I am not happy, Major Fleener, that you
7 are not prepared to conduct voir dire, I understand that
8 you may not be able to conduct voir dire. This afternoon
9 I will tell you -- I'll tell all of you all whether we
10 will have a session tomorrow to conduct voir dire or not.
11 I don't know. I'll have to think and I am going to, I'll
12 think about whether we'll have a session tomorrow to
13 conduct voir dire. But, I do urge you, Major Fleener, to
14 communicate to Colonel Sullivan, the Chief Defense
15 Counsel, my concerns that you are standing here
16 representing Mr. al Bahlul all by yourself.

17
18 Consequently, you do not need to conduct voir dire, but
19 no, at this time. But I am going to proceed on having
20 given you notice and opportunity. If at a later time you

1 conduct voir dire and I am required to grant a challenge
2 for cause, then we will start all over again.

3
4 DC: You are going to give me -- you'll give me time to do voir
5 dire later, of Your Honor?

6
7 PO: Yeah. Well, that was the whole point of that. Yeah.
8 Right. Yeah, I'm sorry. That was the whole point of
9 that. I am going to give you a chance to do voir dire.
10 This afternoon I will decide whether I am going to make
11 you do it tomorrow or some later time.

12
13 DC: I'd ask, Your Honor, to consider when setting the session,
14 I have to call my advisor to determine how I proceed --
15 how I proceed forward in a case with what appears to be a
16 fatal communication problem and now two ethics opinions
17 possibly outstanding and no resolution other than Your
18 Honor's orders, so I will be busy.

19
20 PO: Oh, I didn't say you weren't going to be busy. And I
21 didn't say I was going to set it for tomorrow.

1
2
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21

DC: Yes, sir. I just --

PO: I said I would tell you -- Major Fleener, I will certainly make no decisions without taking input from you and from the prosecutors.

Okay. Therefore, since there are no challenges extent, other than Major Fleener's structural fatal flaw challenge to the operations, I'm not going to -- I am going to continue on.

Okay, before we get to closing the session up for the time being, have counsel for both sides had an opportunity to read and understand the provisions of MCO Number 1, governing protected information, trial?

TC (LtCol [REDACTED]) Yes, Your Honor.

PO: Defense?

1 DC: I've read the MCO, sir.

2

3 PO: Do you have any questions about them?

4

5 DC: Not at this time. I haven't -- I understand drafts have
6 been prepared --

7

8 PO: No, no. No, I'm not talking about protective orders. I
9 mean the provisions of the MCO about protected information.

10

11 DC: Yes, sir, I have understood that.

12

13 PO: Okay you understand those?

14

15 DC: Yes, sir.

16

17 PO: Okay, either side thinks you are going to be bringing up
18 anything that's protected, you have got to tell me
19 beforehand so I don't have any confusions in courts.

20

1 Trial -- Prosecution, despite your wishes, I am not going
2 to require the defense counsel to present motions at this
3 time.

4
5 Is that okay? One of you say, yeah.

6
7 TC (LtCol [REDACTED]): Yes, sir.

8
9 PO: Okay. I thought so.

10
11 Major Fleener, I am going to give you an opportunity to
12 attempt again to talk to your client and I realize that you
13 are attempting to talk to your client. I am now going to
14 call upon him to plea. I'm not going to require you to
15 enter a plea. If you want to enter a plea, you may. But I
16 am going the call upon him to plea.

17
18 You got any -- do you understand what I am saying?

19
20 DC: Yes, sir. Can I -- can I have a few seconds, please?

1 PO: Sure.

2

3 DC: Do I have the opportunity to enter the plea for Mr. al

4 Bahlul?

5

6 PO: Mr. al Bahlul can either enter a plea or not enter a plea.

7 At my discretion, I could, of course, enter a plea of not

8 guilty for him.

9

10 DC: We'd ask --

11

12 PO: I do not intend to do that right now. I am still going to

13 try to give you time to work with Mr. al Bahlul. If you

14 want me -- if you want me to enter a plea, I will. This

15 way I've let you defer everything.

16

17 DC: And thank you.

18

19 PO: You want me to defer pleas, right?

20

21 DC: Please.

1

2 PO: Okay. Defense counsel, you want to defer any motions,
3 right?

4

5 DC: Yes, Your Honor.

6

7 PO: Okay, we'll defer them until I set a motion schedule.
8 Obviously, I'll let everyone in on that.

9

10 Accused and counsel, please rise, just for this once.

11

12 Okay. Let the record reflect that Mr. al Bahlul is not
13 rising.

14

15 Mr. al Bahlul, how do you plea?

16

17 Okay you can be seated, Major Fleener. The court does not
18 require a plea from Mr. al Bahlul at this time and the
19 court will not enter unless the prosecution can show it
20 that it is required to at this specific time, a plea of not

1 guilty -- will not enter a plea of not guilty on his
2 behalf.

3
4 Trial, you got any reason I am required to enter at this
5 time?

6
7 TC (LtCol [REDACTED]): I don't know that you are required to
8 enter, sir. No.

9
10 PO: Thank you. Okay. So there is no question we have all the
11 current POMS and they will be entered on the record as an
12 RE. The current filings inventory has been entered on the
13 record as an RE and if any counsel got any objections to
14 the filings inventory or correctness, you all know how to
15 get a hold of this.

16
17 Yesterday we had a session under the provisions of MCI 8,
18 present which were prosecutors, defense counsel, and
19 myself. We discussed several matters. First of all, I
20 approved Major Fleener's request to delay the start of the
21 session from nine to ten today. We discussed a general

1 order of events recognizing as came true that the order of
2 events might change. I stated a general date of
3 submissions for motions on global issues. Those are the
4 one of the world challenge to the commission process and
5 non-case specific motions. I'll provide a motion schedule,
6 but those motions will generally most likely be due the
7 week of 20 February.

8
9 Case specific motions will be due the week of, generally,
10 the week of 27 March. As a planning matter only and I
11 emphasize that, both sides agree that 15 May would be a
12 good planning start. I once again note that Major Fleener
13 has only been detailed to this case since the 3rd of
14 November and he has no assistant counsel detailed to the
15 case. I do not know the evidence in this case, but just
16 preparing the 58 motions that I received in Hicks, he
17 couldn't even read those 58 motions between now and the
18 15th of May.

1 Please, Major Fleener, as I asked you before, pass your
2 concerns to Colonel Sullivan about you being on this case
3 by yourself.

4
5 DC: Yes, sir.

6
7 PO: Okay. Anything else by either side before we recess or
8 meet on my call?

9
10 TC (LtCol [REDACTED]): Not from the government, sir.

11
12 DC: No, sir.

13
14 PO: Court's in recess.

15
16 The commission hearing recessed at 1231, 11 January 2006.

17
18 [END OF PAGE]

**AUTHENTICATION OF
COMMISSION TRIAL PROCEDURES**

in the case of:

United States v. Ali Hamza Sulayman al Bahlul

a/k/a/ Ali Hamza Ahmed Suleiman al Bahlul

a/k/a Abu Anas al Makki

a/k/a Abu Anas al Yemeni

a/k/a Mohammad Anas Abdullah Khalidi

This is to certify that the Pages 19 through 123 are an accurate and verbatim transcript of the proceedings in the above styled case.

Peter E. Brownback III
Colonel, USA

DATE